

House Bill 1538

By: Representatives Coan of the 101st and Reese of the 98th

A BILL TO BE ENTITLED

AN ACT

To amend Title 13 of the Official Code of Georgia Annotated, relating to contracts, so as to provide for the rejection of construction contracts when certain subcontractors, low tier subcontractors, or materialmen do not provide required insurance coverage; to provide for the definitions of certain terms; to prohibit a general contractor or subcontractor from rejecting work completed, rejecting material supplied, or withholding payment due to lack of conforming insurance following acceptance of a policy or certificate of insurance; to provide certain exceptions; to authorize a general contractor or subcontractor to reject a policy or certificate in writing as nonconforming and withhold payment for work performed or materials supplied; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 13 of the Official Code of Georgia Annotated, relating to contracts, is amended by adding a new chapter immediately following Chapter 11 to read as follows:

"CHAPTER 12

13-12-1.

(a) As used in this chapter, the term:

(1) 'General contractor' shall have the same meaning as 'general contractor' defined in paragraph (5) of Code Section 43-41-2.

(2) 'Lower tier subcontractor' means a person other than a contractor having a direct contract with a subcontractor.

(3) 'Materialman' means any person furnishing materials.

(4) 'Materials' means those items for which liens are permitted under Chapter 14 of Title 44, tools, appliances, machinery, or equipment used in making improvements to the real estate, to the extent of the reasonable value or the contracted rental price, whichever is greater, of such tools, appliances, machinery, or equipment.

(5) 'Subcontractor' means, but is not limited to, subcontractors having privity of contract with the contractor.

(b) If a written construction contract requires a subcontractor, lower tier subcontractor, or materialman to provide a policy or certificate of insurance to the general contractor or another subcontractor for work performed or material provided which extends coverage rights to an additional insured, the general contractor or subcontractor may accept the policy or certificate or may reject it as being nonconforming before the date the subcontractor or lower tier subcontractor commences work or the materialman delivers material.

(c)(1) If the general contractor or subcontractor does not reject the policy or certificate in writing and state the specific reason for the rejection within three business days after receiving the policy or certificate, the general contractor or subcontractor shall be deemed to have accepted the policy or certificate for work performed or materials supplied until such time as the policy or certificate is specifically rejected in writing; provided, however, that the general contractor or subcontractor may not be deemed to have accepted a policy or certificate that does not comply with the insurance coverage limits specified in the construction contract, that was knowingly and fraudulently altered, or that reflects coverages or conditions that are not contained in the underlying policy.

(2) After accepting a policy or certificate, a general contractor or subcontractor may not use the lack of conforming insurance as a reason to reject work previously completed by a subcontractor or lower tier subcontractor, to reject materials previously supplied by a materialman, or to withhold payment for work previously completed or for material previously supplied; provided, however, that the general contractor or subcontractor may reject work previously completed or material previously supplied or may withhold payment for such work or materials if the policy or certificate provided by the subcontractor, lower tier contractor, or materialman:

(A) Does not comply with the insurance coverage limits specified in the construction contract;

(B) Was knowingly and fraudulently altered or reflects coverages or conditions that are not contained in the underlying policy; or

(C) Is canceled, nonrenewed, or materially and adversely altered during the term of the construction contract.

1 (d) If the general contractor or subcontractor rejects a policy or certificate as
2 nonconforming in writing and states the specific reasons for rejection, any provision of the
3 contract requiring such insurance is unenforceable, and payment may be withheld for work
4 performed or materials supplied after the date of the rejection of the policy or certificate."

5 **SECTION 2.**

6 This Act shall become effective on July 1, 2006.

7 **SECTION 3.**

8 All laws and parts of laws in conflict with this Act are repealed.